IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

OP.No. 16608 of 2002(B)

PETITIONER:

P.MOHAMMED KUTTY, AGED 34 YEARS,
S/O. T.T.MOIN, THAYYILL THODIKAYIL HOUSE,
NEELESWARAM P.O., KODUVALLY,KOZHIKODE DISTRICT.

BY ADV. SRI.K.VINOD CHANDRAN

RESPONDENTS:
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1. C.P.ALIKUTTY, NARAKKAL HOUSE,
KARUVAMPOIL,KODUVALLY,KOZHIKODE DISTRICT.

2. THE DISTRICT SUPPLY OFFICER,KOZHIKODE.

3. THE DISTRICT COLLECTOR,KOZHIKODE.

4. THE COMMISSIONER OF CIVIL SUPPLIES,
THIRVANANTHAPURAM.

5. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO THE FOOD CIVIL SUPPLIES AND
CONSUMER AFFAIRS (B) DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SUNITHA SUKUMAR
ADV. SRI.C.P.MOHAMMED NIAS -- R1

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 28208/2002 IN OP NO. 16608/2002 B.

DISMISSED

29/06/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER BEARING NO. CS/10-7675/97 DT. 10/11/98 BY THE R2.

EXT.P2. COPY OF THE ORDER BEARING NO. CS. 10-5346/98 DT. 25/6/99 BY THE R3.

EXT.P3. COPY OF THE ORDER BEARING NO. A8. 28969/99 DT. 21/2/00 BY THE R4.

EXT.P4. COPY OF THE STATEMENT FILED THE ADV. P.M. NIYAS ON BEHALF OF THE PETITIONER BEFORE THE GOVT.

EXT.P5. COPY OF THE ORDER BEARING NO. GO RT NO. 129/2002/F. CS 7CAD DT. 18/5/2002 BY THE GOVT.

EXT.P6. COPY OF THE APPOINTMENT ORDER, APPOINTING RAJI KUMARI AS LICENCEE OF ARD NO. 144, ORDER NO. P. 6/99 DT. 23/2/99.

EXT.P7. COPY OF THE CERTIFICTE BY THE R2 DT. 14/08/2006.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE PHOTOS OF THE NAME BOARD EXHIBITED IN FRONT OF THE RETATION RETAIL SHOP NO. ARD. 130.

True copy

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.16608 of 2002-B & C.M.P.28208 of 2002

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Dated this the 29th day of June, 2007.

JUDGMENT

The petitioner and the first respondent were rival claimants for licence to run an Authorised Retail Depot in ration articles, hereinafter referred to as the "ARD". The authority of the first instance concluded that the petitioner had prior experience from 1990 while the first respondent had prior experience only from 1996. He found that all other relevant indicia were similar in both the cases. Accordingly, preference was given to the petitioner and licence was given to him. In the appeal of the first respondent, the District Collector as the appellate authority interfered by stating that the father of the petitioner is also an ARD and if more than one ARD is granted to the members of a family, there will be a likelihood of abuse of ration articles. Accordingly, he reversed the grant in favour of the petitioner. In the petitioner's appeal before the

Commissioner of Civil Supplies, it was concluded that the views expressed by the District Collector were not appropriate. However, the Commissioner dismissed the appeal of the petitioner by holding that on the facts and in the circumstances of the case, a case of arbitrariness is not made out. In his revision before the Government, the petitioner challenged the order of the Commissioner of Civil Supplies. The Government also dismissed the petitioner's revision by holding that the views expressed are quite proper.

2. Normally, in exercise of authority under Article 226 of the Constitution of India, this Court would not step in to erase an order issued under the Kerala Rationing Order granting a licence unless lack of jurisdiction or proved disqualification of an individual is demonstrated. The concept behind such an approach is that the Government are concerned with the distribution of ration articles and once the Government have expressed their views, it may not be appropriate for the writ Court, except in exceptionally exceptional glaring cases, to sit on a comparative evaluation of the competence of the rival candidates. As already noticed, barring the authority of the first instance, all the other

statutory authorities had concluded against the petitioner. But the fact remains that those conclusions are after finding that the basis of the District Collector's order reversing the grant made by the authority of the first instance was not totally acceptable. Yet, I would be slow in interfering.

3. Be that as it may, it is noticed that on the admission of this writ petition on 20-6-2002, an order of interim stay of the impugned orders for two weeks was passed by this Court on C.M.P.28208/2002. That interim order was extended from time to time on different occasions, going by the endorsements on that C.M.P. and on 1-10-2004 that order of stay was extended until further orders. Thereafter, in 2006, the contesting respondent has placed a counter affidavit. The result of the situation is that in spite of the impugned orders, as a matter of fact, the petitioner following the initial grant, is continuing the operation for the last more than eight years by now. It is true that interlocutory orders are not to govern matters at final disposal. It is also the principle of law that act of courts shall prejudice none. But, as already noticed, a particular situation has occurred in the distribution of ration articles through the ARD in question for the last eight

years, also on the basis of interlocutory orders which were extended from time to time in the presence of the contesting respondent also. If that were so, being a matter relating to distribution of ration articles through the ARDs, it is appropriate that the Government have a second look at the issue in hand, having regard to the circumstances now available.

In the aforesaid circumstances, without expressing anything on merits, this writ petition is disposed of directing the Government to re-consider the issue of grant of ARD No.212 at Omassery, Kozhikode Taluk. Let that be done after affording the petitioner and the first respondent an opportunity of being heard, within a period of four months from the date of receipt of a copy of this judgment. To aid that, the impugned Ext.P5 Government Order is quashed. The interim order of stay granted in this case will continue until a decision as directed above is taken and communicated to the petitioner.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.16608/2002-B & CMP.28208/2002

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JUDGMENT

Dated: 29th June, 2007.